

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 407
PROPOSED HOUSE COMMITTEE SUBSTITUTE S407-PCS15242-RN-24

Short Title: Employee Misclassification/IC Changes.

(Public)

Sponsors:

Referred to:

March 29, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE EMPLOYEE FAIR CLASSIFICATION ACT, TO REQUIRE THE
3 INDUSTRIAL COMMISSION TO IMPLEMENT RULES RELATED TO OPIOIDS AND
4 PAIN MANAGEMENT, TO REMOVE THE REQUIREMENT THAT THE
5 INDUSTRIAL COMMISSION STUDY CAUSES OF INJURY AND RECOMMEND
6 WAYS TO PREVENT INJURIES, AND TO PROVIDE THAT WHEN AN INJURY IS
7 CAUSED BY THE BREACH OF A RULE ADOPTED BY THE EMPLOYER, THAT
8 RULE DOES NOT HAVE TO BE APPROVED BY THE INDUSTRIAL COMMISSION
9 FOR THE PURPOSE OF DETERMINING WHETHER COMPENSATION FOR THE
10 INJURY IS TO BE REDUCED UNDER G.S. 97-12.

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** Chapter 143 of the General Statutes is amended by adding a new
13 Article to read:

14 "Article 82.

15 "Employee Fair Classification Act.

16 **"§ 143-761. Title.**

17 This Article shall be known and may be cited as the "Employee Fair Classification Act."

18 **"§ 143-762. Definitions; scope.**

19 (a) The following definitions apply in this Article:

20 (1) Chairman. – The Chairman of the Industrial Commission.

21 (2) Employ. – As defined by G.S. 95-25.2(3). For the purposes of this Article,
22 an entity or individual shall not be deemed to be an employer of an
23 individual hired or otherwise engaged by or through the entity or individual's
24 independent contractor.

25 (3) Employee. – Any individual that is defined as an employee by either
26 G.S. 95-25.2(4), 96-1(b)(10), 97-2(2), or 105-163.1(4). The term does not
27 mean an individual who is an independent contractor.

28 (4) Employee Classification Section or Section. – The Employee Classification
29 Section within the Industrial Commission.

30 (5) Employee misclassification. – Avoiding tax liabilities and other obligations
31 imposed by Chapter 95, 96, 97, 105, or 143 of the General Statutes by
32 misclassifying an employee as an independent contractor.

33 (6) Employer. – Any individual or entity that employs one or more employees
34 as defined by G.S. 97-2(3).

35 (7) Public notice statement. – Notice as set forth in G.S. 143-764(a)(5).



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1 (b) Nothing in this Article shall be construed or is intended to change the definition of
2 "employer" or "employee" under any other provision of law.

3 **"§ 143-763. Establishment of Employee Classification Section.**

4 (a) The Employee Classification Section is established within the Industrial
5 Commission.

6 (b) The Chairman shall appoint a director of the Section to serve at the Chairman's
7 pleasure with such authority as the Chairman deems necessary to direct and oversee the Section
8 in carrying out the purposes of this Article.

9 (c) The Chairman may employ clerical staff, investigators, and other staff within the
10 Section as is necessary for the Section to perform its duties under this Article.

11 (d) The Office of the State Chief Information Officer shall ensure that the Section is
12 provided with all necessary access to the Government Data Analytics Center and all other
13 information technology services.

14 (e) The Secretary of Revenue, the Commissioner of Labor, the Chairman, and the
15 Assistant Secretary of Commerce for the Division of Employment Security shall each designate
16 an employee of their respective agencies to serve as liaisons to the Section.

17 **"§ 143-764. Section powers and duties.**

18 (a) The Section shall have the following duties:

19 (1) Be available during business hours to receive reports of employee
20 misclassification by telephonic, written, or electronic communication.

21 (2) Investigate reports of employee misclassification and coordinate with and
22 assist all relevant State agencies in recovering any back taxes, wages,
23 benefits, penalties, or other monies owed as a result of an employer engaging
24 in employee misclassification.

25 (3) Coordinate with relevant State agencies and district attorneys' offices in the
26 prosecution of employers and individuals who fail to pay civil assessments
27 or penalties assessed as a result of the employer's or individual's involvement
28 in employee misclassification.

29 (4) Provide all relevant information pertaining to each instance of reported
30 employee misclassification to the North Carolina Department of Labor, the
31 Division of Employment Security within the North Carolina Department of
32 Commerce, the North Carolina Department of Revenue, and the North
33 Carolina Industrial Commission to facilitate investigation of potential
34 violations of Chapter 95, 96, 97, 105, or 143 of the General Statutes.

35 (5) Create a publicly available notice that includes the definition of employee
36 misclassification.

37 (6) Develop methods and strategies for information sharing between State
38 agencies in order to proactively identify possible instances of employee
39 misclassification.

40 (7) Develop methods and strategies to educate employers, employees, and the
41 public about proper classification of employees and the prevention of
42 employee misclassification.

43 (b) No later than October 1 of each year, the Section shall publish annually to the Office
44 of the Governor and to the Joint Legislative Commission on Governmental Operations a report
45 of the administration of this Article, together with any recommendations as the Section deems
46 advisable. This report shall include, at a minimum, the number of reports of employee
47 misclassification received, the number and amount of back taxes, wages, benefits, penalties, or
48 other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies
49 collected, and the number of cases referred to each State agency.

1 (c) The Section may adopt rules in accordance with Article 2A of Chapter 150B of the
2 General Statutes for the purpose of carrying out the provisions of this Article and establishing
3 the processes and procedures to be used under this Article.

4 **"§ 143-765. Occupational licensing boards and commissions; notice requirement;**
5 **applicant certification and disclosure.**

6 (a) Every State occupational licensing board or commission that is authorized to issue
7 any license, permit, or certification shall include on every application for licensure, permit, or
8 certification, or application for renewal of the same, the following:

9 (1) Certification by the applicant that the applicant has read and understands the
10 public notice statement.

11 (2) Disclosure by the applicant of any investigations for employee
12 misclassification and the result of the investigations for a time period
13 determined by the occupational licensing board or commission.

14 (b) An occupational licensing board or commission shall deny the license, permit, or
15 certification application of any applicant who fails to comply with the certification and
16 disclosure requirements of this section.

17 **"§ 143-766. Confidentiality; access to records.**

18 (a) The records of the Section are not public records under G.S. 132-1.

19 (b) The Section shall exchange information as required by this Article.

20 (c) The Section may share information with other State and federal agencies as
21 permitted or required by law.

22 **"§ 143-767. Exchange of information among coordinating agencies.**

23 The North Carolina Department of Revenue, the North Carolina Department of Labor, the
24 Division of Employment Security within the North Carolina Department of Commerce, and the
25 North Carolina Industrial Commission shall disclose all reports and investigations of employee
26 misclassification to the Section. The Section shall distribute the information to the other
27 agencies to allow each agency to conduct an investigation."

28 **SECTION 2.** G.S. 105-259(b) is amended by adding a new subdivision to read:

29 "(53) To furnish to the North Carolina Department of Labor, the Division of
30 Employment Security within the North Carolina Department of Commerce,
31 the North Carolina Industrial Commission, and the Employee Classification
32 Section within the Industrial Commission employee misclassification
33 information pursuant to Article 82 of Chapter 143 of the General Statutes."

34 **SECTION 3.** G.S. 95-25.15(c) reads as rewritten:

35 (c) A poster summarizing the major provisions of this Article shall be displayed in
36 every establishment subject to this Article. This poster shall also include notice indicating the
37 following in plain language:

38 (1) Any worker who is defined as an employee by either G.S. 95-25.2(4),
39 143-762(a)(3), 96-1(b)(10), 97-2(2), or 105-163.1(4) shall be treated as an
40 employee unless the individual is an independent contractor.

41 (2) Any employee who believes that the employee has been misclassified as an
42 independent contractor by the employee's employer may report the suspected
43 misclassification to the Employee Classification Section within the Industrial
44 Commission.

45 (3) The physical location, mailing address, telephone number, and e-mail
46 address where alleged incidents of employee misclassification occurred may
47 be reported to the Employee Classification Section within the Industrial
48 Commission."

49 **SECTION 4.(a)** The Industrial Commission shall adopt rules and guidelines,
50 consistent with G.S. 97-25.4, for the utilization of opioids, related prescriptions, and pain
51 management treatment.

1 **SECTION 4.(b)** The Industrial Commission is exempt from the fiscal note
2 requirement of G.S. 150B-21.4 in developing and implementing the rules and guidelines for
3 opioids, related prescriptions, and pain management treatment.

4 **SECTION 5.** G.S. 97-81(c) is repealed.

5 **SECTION 6.** G.S. 97-12 reads as rewritten:

6 "**§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful disobedience of**
7 **statutory duty, safety regulation or rule.**

8 No compensation shall be payable if the injury or death to the employee was proximately
9 caused by:

- 10 (1) His intoxication, provided the intoxicant was not supplied by the employer
11 or his agent in a supervisory capacity to the employee; or
12 (2) His being under the influence of any controlled substance listed in the North
13 Carolina Controlled Substances Act, G.S. 90-86, et seq., where such
14 controlled substance was not by prescription by a practitioner; or
15 (3) His willful intention to injure or kill himself or another.

16 When the injury or death is caused by the willful failure of the employer to comply with any
17 statutory requirement or any lawful order of the Commission, compensation shall be increased
18 ten percent (10%). When the injury or death is caused by the willful failure of the employee to
19 use a safety appliance or perform a statutory duty or by the willful breach of ~~any rule or~~
20 ~~regulation~~ any reasonable rule or reasonable regulation adopted by the employer ~~and approved~~
21 ~~by the Commission~~ and brought to the knowledge of the employee prior to the injury
22 compensation shall be reduced ten percent (10%). The burden of proof shall be upon him who
23 claims an exemption or forfeiture under this section.

24 "Intoxication" and "under the influence" shall mean that the employee shall have consumed
25 a sufficient quantity of intoxicating beverage or controlled substance to cause the employee to
26 lose the normal control of his or her bodily or mental faculties, or both, to such an extent that
27 there was an appreciable impairment of either or both of these faculties at the time of the injury.

28 A result consistent with "intoxication" or being "under the influence" from a blood or other
29 medical test conducted in a manner generally acceptable to the scientific community and
30 consistent with applicable State and federal law, if any, shall create a rebuttable presumption of
31 impairment from the use of alcohol or a controlled substance."

32 **SECTION 7.** Sections 1, 2, and 3 of this act become effective October 1, 2017.
33 Section 6 of this act becomes effective October 1, 2017, and applies to injuries or deaths
34 occurring on or after that date. The remainder of this act is effective when it becomes law.